

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In re Title to Real Property at 13613 E McNichols.

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ALI NASSAR,

Plaintiff-Appellee,

v

SADOUN HAGE-HASSAN, ROBERT  
ABRAHAM, and SAWSAN ENTERPRISE, INC,

Intervening Defendants-Appellants.

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UNPUBLISHED  
February 25, 2014

No. 311520  
Wayne Circuit Court  
LC No. 11-014343-CH

Before: HOEKSTRA, P.J., and MURRAY and RIORDAN, JJ.

PER CURIAM.

In this quiet title case, defendants appeal as of right the trial court's order quieting title to real property in favor of plaintiff, Ali Nassar. Because we conclude that defendant Sawsan Enterprise, Inc. received constitutionally adequate notice, we affirm.

This case centers around the Wayne County Treasurer's tax foreclosure of real property located at 13613 E. McNichols in Detroit, Michigan. Defendants, who intervened as interested parties in this case, all possessed an interest in the property before its foreclosure. Sadoun Hage-Hassan was the owner of the property and the identified taxpayer, Robert Abraham had a mortgage on the property, and Sawsan Enterprise, Inc. had a leasehold interest and was operating a business on the property. The property was forfeited to the Wayne County Treasurer for nonpayment of property taxes for the 2008 and 2009 tax years. Thereafter, the Wayne County Treasurer petitioned for a judgment of foreclosure, and on March 31, 2011, a judgment of foreclosure was entered vesting absolute fee simple title to the real property at issue in the Wayne County Treasurer. Plaintiff purchased the property at an auction sale on October 19, 2011. Thereafter, plaintiff filed a complaint to quiet title in the property and a motion to quiet title. Defendants answered the complaint and motion, and raised the affirmative defense of lack of notice. Following a hearing, the trial court granted plaintiff's motion to quiet title, treating it as a motion for summary disposition pursuant to MCR 2.116(C)(10). Defendants now appeal as of right, arguing that defendant Sawsan Enterprise was not provided with constitutionally adequate notice.

We review de novo a trial court's decision to grant summary disposition. *Coblentz v City of Novi*, 475 Mich 558, 567; 719 NW2d 73 (2006). Summary disposition pursuant to MCR 2.116(C)(10) tests the factual support for a claim based on the affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties. *Id.* The evidence is viewed in the light most favorable to the nonmoving party. *Id.* at 567-568. "Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to a judgment as a matter of law." *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). Similarly, we also review de novo the constitutional issue whether due process was satisfied. *In re Treasurer of Wayne Co for Foreclosure*, 478 Mich 1, 6; 732 NW2d 458 (2007).

Both the Michigan Constitution and the United States Constitution prohibit the deprivation of property without due process of law. Const 1963, art. 1, § 17; US Const, Am V. In *Sidun v Wayne Co Treasurer*, 481 Mich 503, 509; 751 NW2d 453 (2008), the Court explained the due process required in the context of property foreclosure, stating:

Proceedings that seek to take property from its owner must comport with due process. A fundamental requirement of due process in such proceedings is "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v Central Hanover Bank & Trust Co*, 339 US 306, 314, 70 S Ct 652, 94 L Ed 865 (1950). Interested parties are "entitled to have the [government] employ such means 'as one desirous of actually informing [them] might reasonably adopt' to notify [them] of the pendency of the proceedings." *Dow v Michigan*, 396 Mich 192, 240 NW2d 450 (1976), quoting *Mullane*, *supra* at 315, 70 S Ct 652. That is, the means employed to notify interested parties must be more than a mere gesture; they must be means that one who actually desires to inform the interested parties might reasonably employ to accomplish actual notice. *Mullane*, *supra* at 315, 70 S Ct 652. However, "[d]ue process does not require that a property owner receive actual notice before the government may take his property." [*Jones v Flowers*, 547 US 220, 226; 126 S Ct 1708; 164 L Ed 2d 415 (2006)].

The Court in *Sidun* further explained that a "notification method may be reasonable and constitutional if employing the method is 'reasonably certain to inform those affected,' or when circumstances do not reasonably permit such notice, if the method employed is not substantially less likely to provide notice than other customary alternative methods." *Sidun*, 481 Mich at 510, quoting *Mullane*, 339 US at 315.

On appeal, defendants argue that the service effectuated by the Wayne County Treasurer pursuant to its tax foreclosure of the property was inadequate because it failed to provide constitutionally adequate notice of the proceedings to Sawsan Enterprise. The evidence submitted in this case demonstrates that while the Wayne County Treasurer did not send notice by certified mail to Sawsan Enterprise, it did send a process server to the property. According to a "proof of personal visit" form that was filled out and signed by the process server, the process server visited the property on November 24, 2010 at 10:39 a.m. and found the property to be an occupied structure. The process server was "able to personally serve upon the occupant a copy of the Notice to Show Cause Hearing and Judicial Hearing Notice and Foreclosure Petition."

The form further indicates that the process server also orally informed the occupant that “the property will be foreclosed and the occupants will be required to vacate unless all delinquent taxes, interest, penalties, and fees are paid to the County Treasurer before the foreclosure date.” Finally, the form indicates that the process server also provided the occupant with information regarding the foreclosure process. The form is signed and notarized. Thus, at issue is whether the conduct described in the proof of personal visit form provided constitutionally adequate notice to Sawsan Enterprise.<sup>1</sup>

Plaintiff claims that the proof of personal visit form establishes that Sawsan Enterprise received adequate notice because it shows that the process server personally visited the property, gave an occupant copies of the notices and orally explained the consequences of the foreclosure proceedings. Defendants offer no evidence to rebut the proof of personal visit form. Rather, defendants claim that the form does not establish that constitutionally adequate service was provided in light of the fact that the form does not specifically identify who was served and the owner of Sawsan Enterprise executed an affidavit stating that she was never informed about the foreclosure proceedings and that she would have redeemed the property if she had been given notice.

We conclude that the notice to Sawsan Enterprise was constitutionally adequate. First, we note that it is well established that actual notice is not required in order to satisfy due process. *Jones*, 547 US at 226. Rather, in *Sidun*, 481 Mich at 509, the Court, quoting *Mullane*, 339 US at 314, noted that due process simply requires “notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” The Court in *Sidun* further explained that a “notification method may be reasonable and constitutional if employing the method is ‘reasonably certain to inform those affected,’ or when circumstances do not reasonably permit such notice, if the method employed is not substantially less likely to provide notice than other customary alternative methods.” *Sidun*, 481 Mich at 510, quoting *Mullane*, 339 US at 315. Thus, the personal service upon an occupant of the property, on which Sawsan Enterprise operated a store, was reasonably certain to inform Sawsan Enterprise of the proceedings. Moreover, generally personal service is considered more likely to actually inform a property owner of the pendency of the proceedings than notice by mail. See *Dow v Mich*, 396 Mich 192, 211; 240 NW2d 450 (1976) (nothing that personal service is not required, and notice by mail is adequate).

Finally, we find defendants’ reliance on *Jones*, 547 US at 233, unavailing because the situation in this case is distinguishable from the situation discussed in *Jones* because in this case, the process server orally informed the occupant about the tax foreclosure proceedings and

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<sup>1</sup> We note that it is not disputed that the Wayne County Treasurer never sent notice of the proceedings to Sawsan Enterprise by certified mail. While this failure is contrary to the requirements of the GPTA, MCL 211.78i(2), the issue on appeal is not whether the GPTA was complied with because the time period for challenging the foreclosure is expired. MCL 211.78k. Rather, the only issue before this Court is whether the notice provided to Sawsan Enterprise by Wayne County was constitutionally adequate under the Due Process Clause.

specifically handed the occupant documentation. *Jones* addressed a situation where a tenant simply received a certified mailing addressed to the property owner and had no way to know the contents of the mailing. Thus, the fact that a tenant cannot be expected to know the contents of a letter mailed to the property owner is of no import in this case because the occupant was orally informed about the contents of the documents served upon him or her.

Therefore, we conclude that defendants have failed to demonstrate any issue of material fact regarding the adequacy of the notice provided to Sawsan Enterprise. Accordingly, we affirm the trial court's order quieting title in plaintiff.

Affirmed.

/s/ Joel P. Hoekstra  
/s/ Christopher M. Murray  
/s/ Michael J. Riordan